

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FEDERAL TRADE COMMISSION,

2:08-CV-00620-PMP-PAL

Plaintiff,

10 || VS.

PUBLISHERS BUSINESS SERVICES, INC., a corporation; ED DANTUMA ENTERPRISES, INC., a corporation, also dba PUBLISHERS DIRECT SERVICES and PUBLISHERS BUSINESS SERVICES; PERSIS DANTUMA; EDWARD DANTUMA; BRENDA DANTUMA SCHANG; DRIES DANTUMA; DIRK DANTUMA; and JEFFREY DANTUMA, individually and as officers or managers of publishers Business Services, Inc., or Ed Dantuma Enterprises, Inc.,

**ORDER RE:
EQUITABLE DAMAGES**

Defendants.

Plaintiff FTC commenced this action on May 14, 2008, by filing a

Complaint for Injunctive and other Equitable Relief (Doc. #1). FTC amended its Complaint (Doc. #62) on February 5, 2009. Named as Defendants are Publishers Business Services, Inc., a corporation; Ed Dantuma Enterprises, Inc., a corporation also dba Publishers Direct Services and Publishers Business Services; Persis Dantuma; Edward Dantuma; Brenda Dantuma Schang; Dries Dantuma; Dirk

1 Dantuma; and Jeffrey Dantuma, individually and as officers, directors, or manager of
2 Publishers Business Services, Inc., or Ed Dantuma Enterprises, Inc.

3 FTC alleges that between January 1, 2004 and August 31, 2008,
4 Defendants garnered \$34,419,363.00 in gross revenues through consistent,
5 widespread, deceptive, and abusive sales and collection practices relating to
6 telemarketing sales of magazine subscriptions. Pursuant to Sections 13(b) and 19 of
7 the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15
8 U.S.C. § 6105(b), FTC sought a permanent injunction to prevent future violations of
9 the FTC Act and the Telemarketing Sales Rule (“TSR”) by Defendants. FTC also
10 sought restitution, the refund of monies paid, and the disgorgement of profits to
11 redress injury to consumers resulting from Defendants’ alleged violations of the FTC
12 Act and the TSR.

13 On June 3, 2008, the Court approved the Stipulation reached by the parties
14 for a Preliminary Injunction enjoining Defendants from, directly or indirectly,
15 engaging in deceptive or abusive sales and collection practices in relation to the sale
16 of magazine subscriptions. This Preliminary Injunction effectively caused
17 Defendants to cease their telemarketing business.

18 Following the completion of discovery in this action, the Court entered
19 Orders granting FTC’s Motion for Summary Judgment (Doc. #151) and for
20 Permanent Injunction (Doc. #152) on April 7, 2010. The Orders contained a detailed
21 statement of the allegations of the parties and the Court’s findings, and need not be
22 repeated here. In its Order on Summary Judgment (Doc. #151) the Court furthered
23 ordered an evidentiary hearing on the issue of equitable damages to be awarded, if
24 any.

25 Considerable disagreement ensued between the parties concerning the
26 scope of permissible additional discovery, and evidence to be presented at the

1 hearing on damages. As a result, the evidentiary hearing on equitable damages did
2 not commence until March 30, 2011, and after an interruption due to scheduling
3 issues, was completed June 9, 2011. (See documents #233, #234, #243, #244, and
4 #245).

5 Restitution is a form of ancillary equitable damages relief available to
6 effect complete justice under Section 13(b) of the FTC Act for violation of Section 5
7 of the Act and the TSR. FTC v. Gill, 265 F.3d 944, 958 (9th Cir. 2001); FTC v.
8 Stefanchik, 559 F.3d 924, 931 (9th Cir. 2009). Complete disgorgement of
9 Defendants entire gross revenues between January 1, 2004 and August 31, 2008 is
10 not appropriate, however, unless FTC proves that such gross revenue is a
11 “reasonable approximation” of Defendants’ gains from violations of Section 5 of the
12 FTC Act. FTC v. Verity, Intern., Ltd., 443 F.3d 48, 67 (2nd Cir. 2006); FTC v.
13 Figgie Intern., Inc., 994 F.2d 595, 607 (9th Cir. 1993).

14 The Court finds that FTC has not proved that relief in the form of
15 restitution by complete disgorgement of profits is necessary to redress injury to the
16 consuming public demonstrated in this case.

17 The evidence adduced during five days of testimony did not establish the
18 necessary link between Defendants acts in violation of Section 5, and PBS’s entire
19 gross revenues between January 1, 2004 and August 31, 2008. Instead, a
20 preponderance of the evidence shows that although Defendants’ conduct in violation
21 of Section 5 of the FTC Act warranted issuance of the Permanent Injunction in this
22 case, FTC has failed to establish that all, or even a significantly quantifiable number
23 of sales or collections warrant wholesale disgorgement.

24 Additionally, although full reimbursement to all complaining customers
25 might provide a reasonable approximation of revenues received by Defendants in
26 violation of Section 5, the evidence adduced demonstrates that it is either impossible

1 or impracticable to locate and reimburse those individual customers. FTC v. Pantron
2 I Corp., 33 F.3d 1088 (9th Cir. 1944).

3 In granting Summary Judgment and issuing the Permanent Injunction in
4 this case, the Court found Defendants' sales process violated Section 5 of the FTC
5 Act. The Court did not find, however, that Defendants' customers did not receive
6 the magazines ordered, nor did it find that most of the complaining customers ever
7 paid any money to Defendants. Indeed, the record before the Court strongly suggests
8 that most customers who complained of misrepresentation by Defendants elected to
9 withhold payment even after Defendants collection efforts.

10 The Court concludes disgorgement here is warranted only to the extent of
11 net revenues received by PBS as a result of its violation of Section 5 of the FTC Act.
12 After considering all of the evidence presented, the Court finds that the analysis
13 provided by Defendants expert, Dr. Gregory Duncan, that \$191, 219.00 is a
14 reasonable measure of equitable damages to which Plaintiff FTC is entitled to
15 recover on behalf of Publishers customers. Not all Defendants in this action are,
16 however, jointly and severely liable for payment of equitable damages.

17 With respect to the knowledge of individual Defendants of deceptive acts
18 or practices in violation of Section 5, the Court finds insufficient evidence to hold
19 Defendant's Persis Dantuma, Brenda Dantuma Schang, Dirk Dantuma and Jeffrey
20 Dantuma individually liable for equitable monetary relief in this case. The record is
21 sufficient, however, show that in addition the corporate Defendants, and individual
22 Defendants' Edward Dantuma and Dries Dantuma had actual knowledge or were
23 recklessly indifferent to the alleged violations of Section 5.

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1 **IT IS THEREFORE ORDERED** that Defendants' Publishers Business
2 Services, Inc., a corporation; Ed Dantuma Enterprises, Inc., a corporation, also dba
3 Publishers Direct Services and Publishers Business Services; Edward Dantuma; and
4 Dries Dantuma shall pay to Plaintiff Federal Trade Commission (FTC) the sum of
5 **\$191, 219.00** as and for equitable damages.

6 **IT IS FURTHER ORDERED** that Clerk of Court shall forthwith enter
7 **JUDGMENT** accordingly.

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9 DATED: July 25, 2011.

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12 PHILIP M. PRO
United States District Judge

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